

After reviewing the record and considering the arguments of the parties, the Appeals Board finds the March 6, 1995 Preliminary Hearing Order should be reversed. Claimant, a janitor employed by the City of Wichita at the Wichita Mid-Continent Airport, was injured during her lunch break at Sarah's Ice Cream, a restaurant located at the airport. Claimant contends the injury is compensable because it occurred on property which should be considered the respondent's premises. The evidence establishes that Sarah's restaurant leases space at the airport from the City of Wichita for purposes of operating its business. Claimant and other employees were instructed to remain at the airport during their lunch break. Sarah's Ice Cream is one of several locations where claimant might have chosen. By case law, premises are defined to include property controlled by the respondent. Thompson v. Law Offices of Alan Joseph, 19 Kan. App. 2d 367, 869 P.2d 761 (1994). The Appeals Board does not consider the control evidenced by lease in this case to cause the

property to be considered the premises of the City of Wichita for purposes of workers compensation coverage. Nothing in the record indicates the City had the kind of control over day-to-day activities at the restaurant which would enable it to have direct or immediate control over the risk of injury. Accordingly, the Appeals Board finds that the decision granting benefits should be reversed.

WHEREFORE, the Order of Administrative Law Judge Shannon S. Krysl dated March 6, 1995 should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of June 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Mark T. Schoenhofer, Wichita, KS
David J. Morgan, Wichita, KS
Randall C. Henry, Hutchinson, KS
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director